

claim 67 itself. Paragraph [0018] also provides express support for this limitation. Further, paragraphs [0089] and [0090] provide support for providing the statistical report to the commercial entity, such as providing the statistical report to a commercial entity whose brand names were featured in the computerized games.).

(6) Grounds of Rejection and Objection to be Reviewed on Appeal

Appellants are appealing two rejections lodged under 35 U.S.C. § 103(a). The first ground of rejection appealed is premised on the assertion that claims 33-37, 42, 44-49, and 64-70 are allegedly unpatentable over U.S. Patent No. 6,764,395 to Guyett (“Guyett”) in view of U.S. Patent Application Publication No. 2003/0191690 to McIntyre (“McIntyre”). Specifically, the Examiner asserts that as to the independent claims, Guyett discloses all the limitations but for “generating a statistical report and sending it to the commercial entity.”¹ However, the Examiner also asserts that McIntyre discloses these missing limitations and that it would have been obvious to one skilled in the art to combine Guyett with McIntyre to practice the steps of Appellants’ claims 33-37, 42, 44-49, and 64-70. More specifically, the Examiner’s position is that McIntyre “teaches a statistical report that keeps track of how many times a game is played and the sending of this report to sponsors of the game (Paragraph 0008).”²

Appellants have reviewed McIntyre and find the bases for the Examiner’s conclusions to be unfounded. McIntyre neither discloses the generation of any statistical report as claimed, nor does it disclose the step of providing that statistical report to the commercial entity as claimed. At best McIntyre discloses a step of billing a sponsor according to the number of times a sponsor’s advertising is displayed. Consequently, even if Guyett and McIntyre were combined, one of ordinary skill still would not reach the invention as recited in claims 33/67 because the resulting combination fails to disclose: (a) generating a statistical report from the data [associated with the consumer’s interactions with the present interactive advertising message/computerized game]; or (b) providing the statistical report to the commercial entity. Even if it is determined that Guyett in combination with McIntyre discloses all the limitations of Appellants’ claims,

¹ September 6, 2006 Office action, p. 7.

² September 6, 2006 Office action, p. 7.